

TEXAS DEPARTMENT OF PUBLIC SAFETY

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November 8, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ET Docket No. 04-295, FCC 04-187
Comments on FCC Notice of Proposed Rulemaking

Dear Secretary Dortch:

The Texas Department of Public Safety ("Department") submits these comments on the Federal Communications Commission ("FCC") Notice of Proposed Rulemaking ("NPRM") relating to the Communications Assistance for Law Enforcement Act ("CALEA") applicability to packet-mode services.

The advent of new communications technologies, including broadband Internet access, voice over IP telephony ("VoIP"), push-to-talk digital dispatch services, and other packet-mode services, has negatively impacted law enforcement's ability to conduct authorized electronic surveillance. The cost to law enforcement to conduct electronic surveillance has drastically increased over the past several years whether it is the exorbitant fees charged by the communications carriers to administer CALEA solutions, the circuits to facilitate the delivery of CALEA J-Standard messaging or the equipment needed to conduct these surveillances.

The State of Texas has had the statutory ability to conduct authorized electronic surveillance since 1981. The Department has observed over the years that targets of these surveillances have slowly migrated toward communication technologies that are thought to be immune to law enforcement's ability to conduct electronic surveillance. Nextel's push-to-talk digital dispatch service is a great example of this migration. Texas is a largely rural State and Nextel's service area coverage had a small footprint. Once Nextel's service area grew and the belief that Nextel's push-to-talk digital dispatch service was not susceptible to law enforcement's ability to conduct electronic surveillance, the use of this service by narcotics traffickers increased. VoIP will be the next technological advance in communication services to be exploited by narcotics traffickers and terrorist.

Law enforcement's ability to garner intelligence and identify suspects during implementation of authorized electronic surveillance will be adversely affected if particular CALEA capabilities, such as dialed digit extraction, conference call, party join, add and drop, etc., do not apply to carriers providing packet-mode services. Call-identifying information must be provided to law enforcement in a standard format, as state and local law enforcement do not have the personnel or financial resources to develop surveillance solutions for each carrier providing packet-mode services.

The Department concurs with the FCC's belief that "there is an overriding public interest in maintaining law enforcement's ability to conduct wiretaps of on-going voice communications that are taking place over networks that are rapidly replacing the traditional circuit-switched network, yet providing consumers essentially the same calling capability that exists with legacy POTS service". The public interest will best be served with the FCC's ruling that CALEA applies to packet-mode services and rules are adopted to enforce carrier compliance.

Respectfully submitted,

Thomas A. Davis, Jr., Director
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Austin, Texas